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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re the Marriage of HOLLY F. ZINCHEFSKY and RYAN D. ZINCHEFSKY.	
HOLLY F. ZINCHEFSKY, Respondent, v. RYAN D. ZINCHEFSKY, Appellant.	A154284 (Contra Costa County Super. Ct. No. D15-05054)

Appellant Ryan D. Zinchesfky (appellant) appeals following the trial court's judgment in this marital dissolution proceeding. We affirm.

BACKGROUND

Appellant and respondent Holly F. Zinchefsky (respondent) married in December 2011 and separated in August 2015. The have a son (Minor), born in October 2013. The parties lived in the Republic of Palau for about three years; they moved to the Bay Area in November 2014.

In October 2015, respondent filed a petition for dissolution of the marriage. In December 2016, respondent requested a custody order. The parties participated in mediation and agreed to a shared custody schedule. The trial court adopted the agreement in a custody order in April 2017. The court also directed, "Neither parent

shall care for the minor child during the other parent's custodial time absent prior written agreement to the contrary. If there are important school events where both parent's attendance would be reasonably expected, such as school parades, both parents may attend these events."

Also in April 2017, appellant filed a request for a move away order authorizing him to move with Minor to Southern California. In May, respondent filed a request for attorney fees. At a hearing in June, the trial court ordered that the move-away request be heard at the time of trial, which was set for August 22. At the same hearing, the trial court ordered that appellant pay respondent $50,000 for attorney fees under Family Code section 2030,[1] based on respondent's showing of need and evidence of appellant's ability to pay.

On July 24, 2017, appellant moved ex parte for continuance of trial. He claimed a continuance was necessary for mediation regarding his move away request, completion of discovery, and appointment of a custody evaluator. The trial court denied the request.

The trial took place over nine court days, commencing on August 22, 2017 and ending on February 8, 2018. In March 2018, the trial court filed a final statement of decision (the Decision). The Decision, among other things, divided the marital property; imputed income to appellant; set spousal and child support at zero; ordered that appellant pay respondent $60,000 in sanctions pursuant to section 271; ordered that appellant pay respondent $20,000 in attorney fees pursuant to section 2030; and denied appellant's move away request. The Decision also ordered that, "[N]either party shall attend [Minor's] extracurricular activities during the other parent's custodial time, unless it is a game, a meet, or a performance."

Following subsequent proceedings regarding post-judgment motions by appellant, the trial court awarded respondent an additional $5,500 in attorney fees "for having to come to court to address these latest filings."

[1] All undesignated statutory references are to the Family Code.

DISCUSSION

I. *Appellant Has Not Shown Error With Respect to the Attorney Fees Awards*

Appellant's primary contention on appeal is that the trial court erred in denying his motion to compel disclosure of respondent's counsel's unredacted billing statements and in awarding respondent attorney fees under section 2030 based on the "heavily redacted itemized billing statement[s]." As noted previously, appellant was ordered to pay $50,000 in respondent's fees before trial, an additional $20,000 in the Decision, and an additional $5,500 for post-trial matters. Appellant has not shown error.

At the outset, we reject appellant's argument that the trial court erred in concluding the billing statements are protected by the attorney-client privilege. In *Los Angeles County Bd. of Supervisors v. Superior Court* (2016) 2 Cal.5th 282, 297 (*L.A. Board of Supervisors*), the California Supreme Court held that billing statements are not "categorically privileged," but "[w]hen a legal matter remains pending and active, the privilege encompasses everything in an invoice, including the amount of aggregate fees." That is because, "[t]o the extent that billing information is conveyed 'for the purpose of legal representation'—perhaps to inform the client of the nature or amount of work occurring in connection with a pending legal issue—such information lies in the heartland of the attorney-client privilege. And even if the information is more general, such as aggregate figures describing the total amount spent on continuing litigation during a given quarter or year, it may come close enough to this heartland to threaten the confidentiality of information directly relevant to the attorney's distinctive professional role. The attorney-client privilege protects the confidentiality of information in both those categories, even if the information happens to be transmitted in a document that is not itself categorically privileged." (*Ibid.*; cf. *id.* at p. 298 ["The same may not be true for fee totals in legal matters that concluded long ago."].) Accordingly, the trial court properly concluded the information in the billing statements was within the scope of the attorney-client privilege and did not need to be disclosed in unredacted form.

Appellant also argues the trial court should have reviewed the unredacted billing statements in camera. However, there was no need to examine the statements in camera

to determine whether they were privileged, because they clearly fell within the scope of the privilege under the *L.A. Board of Supervisors, supra,* 2 Cal.5th at page 297. As explained in *League of California Cities v. Superior Court* (2015) 241 Cal.App.4th 976, 989, "in camera review of information claimed to be privileged cannot be compelled by a trial court for the purpose of making an initial determination that a communication is subject to the claimed privilege. [Citation.] Rather, the trial court must make an initial assessment of the facts, to determine whether the dominant purpose of the relationship was an attorney-client relationship. [Citation.] When the dominant purpose of the relationship is 'one of attorney-client, the communication is protected by the privilege.' " Because the privileged nature of the communication was obvious from the redacted statements, no in camera review was appropriate on the question of privilege.

We also understand appellant to argue it was impossible for the trial court to assess the reasonableness of the fee award under section 2030 without review of the unredacted invoices. However, appellant fails to articulate any basis to question the reasonableness of the fees charged by counsel. The main thrust of appellant's argument on the issue is that names of third parties contacted by counsel were redacted. From the frequency of redactions, appellant speculates "it almost appears as if a third party is controlling the dissolution for [respondent]." However, appellant fails to explain why such redactions present any basis to question the accuracy of the charges; it is not unusual for an attorney to communicate with others in the course of representing a client.[2]

Furthermore, appellant presents no reasoned argument why the fees awarded are unreasonable in light of " 'the nature of the litigation, its difficulty, the amount involved, the skill required and the skill employed in handling the litigation, the attention given, the success of the attorney's efforts, his learning, his age, and his experience in the particular type of work demanded [citation]; the intricacies and importance of the litigation, the

[2] Appellant argues the attorney-client privilege "does not operate to protect the identity of individuals." We need not and do not address that question, because appellant has not shown the identity of the people counsel communicated with was necessary to the trial court's reasonableness determination.

labor and the necessity for skilled legal training and ability in trying the cause, and the time consumed.' " (*In re Marriage of Cueva* (1978) 86 Cal.App.3d 290, 296.) *Cueva* observed that, "In many cases the trial court will be aware of the nature and extent of the attorney's services from its observation of the trial proceedings and the pretrial and discovery proceedings reflected in the file." (*Id.* at p. 301.) In *Cueva*, it appears counsel did not present an itemized statement to support the fee request and the trial court did not otherwise have a basis to assess "the nature and extent of the services counsel actually rendered." (*Id.* at pp. 295, 301].) In the present case, by contrast, the trial court had detailed, albeit significantly redacted itemized statements, and the trial court was personally familiar with the proceedings. (See also *Gorman v. Tassajara Development Corp.* (2009) 178 Cal.App.4th 44, 65 [distinguishing *Cueva* on similar grounds].) Thus, *Cueva* does not support appellant's suggestion that the redacted itemized statements were insufficient to support the trial court's award of attorney fees. In fact, "[i]n California, an attorney need not submit contemporaneous time records in order to recover attorney fees." (*Martino v. Denevi* (1986) 182 Cal.App.3d 553, 559; accord *Mardirossian & Associates., Inc. v. Ersoff* (2007) 153 Cal.App.4th 257, 269.)

Appellant has not shown the trial court abused its discretion with respect to the attorney fees award. (*In re Marriage of Cueva*, *supra*, 86 Cal.App.3d at p. 296 ["A motion for attorney fees and costs in a dissolution action is addressed to the sound discretion of the trial court, and in the absence of a clear showing of abuse, its determination will not be disturbed on appeal."].)[3]

II. *Appellant's Other Claims of Error Fail*

Appellant makes a large number of other arguments which merit only brief consideration.

Appellant argues the trial court erred in denying his July 24, 2017 motion to continue the trial set for August 22. He argues a continuance was required because his move away request obligated the trial court to order mediation under section 3170,

[3] We need not address whether the trial court also properly denied the motion to compel on the ground that it was untimely.

subdivision (a).[4] However, the parties had already participated in custody mediation in January. Appellant cites no authority that serial mediations are mandated by statute in the circumstances of the present case. A similar request for a second mediation was rejected in *In re Marriage of Green* (1989) 213 Cal.App.3d 14, 24–25, in which the court of appeal concluded similar language in former Civil Code section 4607 did not mandate a second mediation. The court observed, "Mediation is provided early in the proceeding to help the parents to reach their own resolution of such disputes. When mediation is unsuccessful in resolving the custody or visitation dispute, the statutory requirement has been met and a resubmittal to mediation need not be ordered at the request of a party upon trial of that dispute." (*Green*, at p. 25.) Neither has appellant shown any error in failing to order a second mediation was prejudicial, given the lack of any indication that the parties would have resolved the issue or that the trial court had any inclination to grant the move away request.[5]

Appellant also argues the court should have continued the trial and appointed a child custody evaluator. (See § 3111, subd. (a) ["In any contested proceeding involving child custody or visitation rights, the court may appoint a child custody evaluator to conduct a child custody evaluation in cases where the court determines it is in the best interests of the child."].) But appellant admits it was a discretionary decision; the trial court did not abuse its discretion in denying appellant's request, made on the eve of trial.[6]

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[4] Section 3170, subdivision (a) provides: "If it appears on the face of a petition, application, or other pleading to obtain or modify a temporary or permanent custody or visitation order that custody, visitation, or both are contested, the court shall set the contested issues for mediation."

[5] In the one case appellant cites on the prejudice issue, the court of appeal reversed grant of a move away request because the father did not have "an opportunity to be meaningfully heard" before the request was granted, not because of failure to order mediation. (*In re Marriage of Seagondollar* (2006) 139 Cal.App.4th 1116, 1119.)

[6] We previously rejected appellant's argument that a continuance was necessary for disclosure of unredacted copies of respondent's counsel's time records. Appellant also complains about denial of his challenges to the trial court under Code of Civil Procedure sections 170.1 and 170.6 on the ground that the court was prejudiced against him. However, appellant has not presented any reasoned argument that the trial court erred and

Appellant argues the trial court erred in excluding his proffered evidence that respondent's alleged debt to her parents was a "fraud." In particular, he sought to present documents signed by respondent's parents, arguing the signatures on those documents appear different from those on the promissory notes evidencing the over $50,000 loan to respondent and other related documents.[7] The trial court did not abuse its discretion. (*Velasquez v. Centrome, Inc.* (2015) 233 Cal.App.4th 1191, 1211.) The court could reasonably exclude the evidence under Evidence Code section 352, as evidence of minimal probative value that threatened significant "undue consumption of time" in a mini-trial about signature authentication.[8] (See also *Velasquez*, at p. 1211.) Moreover, appellant cannot demonstrate a reasonable probability the result would have been different had the evidence been admitted, given respondent's mother's sworn testimony at trial that the loans were real. (*In re Marriage of Smith* (1978) 79 Cal.App.3d 725, 751 [erroneous exclusion of evidence harmless where there was no reasonable probability of a different result had it been admitted]; see also Evid. Code, § 354; Cal. Const., art. VI, § 13.) It follows that appellant also has not shown the trial court erred in considering respondent's debt in awarding her attorney fees.

The trial court also did not abuse its discretion in its evidentiary rulings related to appellant's attempts to challenge respondent's income. Appellant asserts the trial court did not permit him to cross-examine respondent regarding "discrepancies in her income" and prohibited him from introducing her paystubs into evidence. But the cited portions of the record demonstrate that the court allowed appellant adequate opportunity to cross-

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any such claims have been forfeited. (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784–785.)

[7] Appellant's September 2018 request for judicial notice of the pertinent documents is denied because the parties agree the documents are already in the record. Respondent's August 2018 motion for sanctions against appellant due to motions filed before this court is denied.

[8] The trial court's comment in excluding one of the documents—"I'm not sidetracking this custody trial on some allegation that this witness forged documents"—indicates the court's ruling was under the rationale of Evidence Code section 352. The trial court also did not abuse its discretion in excluding appellant's proffered testimony about an instance when he observed respondent's mother sign her name.

examine respondent and only limited questioning and the introduction of evidence as reasonably necessary to prevent undue consumption of time on peripheral matters. (See Evid. Code § 352.) Appellant also contends the trial court erred in quashing his subpoena to respondent's employer and in refusing to consider information received from a payroll service company. Respondent argues, among other things, that the trial court properly excluded those materials because appellant's subpoenas were untimely. We need not consider the parties' contentions as to timeliness, because appellant has not shown a reasonable probability the result of the proceedings would have been different had the materials been received into evidence. (*In re Marriage of Smith, supra*, 79 Cal.App.3d at p. 751.)[9]

The trial court did not abuse its discretion by excluding evidence of the parties' marital standard of living when they resided in the Republic of Palau. Although the evidence was relevant to the spousal support determination (§ 4320), the trial court could reasonably conclude the testimony would have consumed an undue amount of time, because the evidence had little probative value in light of the undisputed difference in the cost of living between Palau and the San Francisco Bay Area. Neither has appellant shown any error in exclusion of the evidence was prejudicial; that is, he has not shown any likelihood he would have been awarded support had the evidence been admitted.

Appellant challenges the language in the trial court's Decision directing that, "Neither parent shall attend [the Minor's] extracurricular activities during the other parent's custodial time, unless it is a game, meet, or a performance." Appellant contends the order is "essentially a *de facto* protective order or a restraining order by another name because the practical effect of the language is to prevent [appellant] from being at a particular place . . . at a particular time." Appellant has not shown the court abused its

[9] Appellant also emphasizes a post-trial, April 2018 income and expense declaration submitted by respondent showing a higher income than previously reported. However, respondent stated the declaration was based on a calculation error and submitted a corrected declaration. Appellant has not shown the trial court abused its discretion in denying his request for issuance of a subpoena for additional documents on the issue, or that he was prejudiced by any error.

discretion. (*In re Marriage of Burgess* (1996) 13 Cal.4th 25, 31.) He cites no authority supporting his suggestion that any order that has the effect of constraining where the parties can be present must be treated as a restraining order. The trial court's order is reasonable in light of the contentiousness of the divorce proceedings, and it is supported by the expert testimony respondent presented at trial regarding the potential harm that can result when one parent attempts to spend time with a child during the other parent's custodial time. Neither has appellant shown the order must be reversed due to vagueness.

Appellant briefly argues the trial court's award of $60,000 in sanctions to respondent was improper, primarily because the court did not permit him to present evidence of respondent's and respondent's counsel's behavior. The record citations provided by appellant do not support that assertion; to the contrary, the trial court allowed testimony and cross-examination on that subject and did not place any general restrictions on evidence in that regard.

Finally, we deny appellant's request that this court make its own factual determinations as to appellant's move away request under Code of Civil Procedure section 909.

DISPOSITION

The trial court's judgment and orders are affirmed.

SIMONS, Acting P.J.

We concur.

NEEDHAM, J.

BURNS, J.

(A154284)